



Natural Resources Board
District #1 Environmental Commission
440 Asa Bloomer State Office Bldg.
Rutland, VT 05701

www.nrb.state.vt.us

October 30, 2018

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Burlington, VT 05401

Subject: Jurisdictional Opinion #6-013, Mark and Amanda St. Pierre and M&A Holdings, LLC, Regarding their property at 1903 Richford Road, Berkshire, VT.

Dear Ms. Safar:

I write in response to your request dated August 23, 2018, for a Jurisdictional Opinion as provided for in 10 V.S.A. § 6007 ("the request"). My opinion follows.

I. Summary of Opinion

The conversion of otherwise exempt bulk fuel tanks for commercial sales to other farmers or to private off-road ATV or other similarly situated customers is not entitled to the "agricultural exemption" to which the construction and use of the tanks was otherwise entitled.

Accordingly, an Act 250 Land Use Permit is required prior to continued use in the manner described herein. 10 V.S.A. § 6001 et seq. (Act 250).

II. Facts and Documents

In reaching the conclusion outlined in Section I above, I relied upon the facts as outlined in your letter request, supplemented with additional information made available from you or otherwise obtained from the public record.

1. M&A Holdings, LLC (M&A) is a Vermont Limited Liability Company having its principal place of business located at 1903 Richford Road, Berkshire, Vermont 05447.
2. M&A has as its two principal members Mark and Amanda S. Pierre.
3. The property held by M&A is located at 1903 Richford Road, Berkshire, VT.

4. This property is surrounded by property owned by Mark St. Pierre and Mark and Amanda St. Pierre.
5. The property houses a farm office with associated parking that manages activities occurring on the neighboring farm, Pleasant Valley Farm (the Farm).
6. On or about June 1, 2018, the St. Pierres purchased a fuel business from Robert McAllister named McAllister Fuels ("McAllister"). Previously Pleasant Valley Farm was the single largest consumer of fuel from McAllister. McAllister also sold to other local customers.
7. The Property already housed large fuel tanks that were used exclusively for farm purposes. The St. Pierres added additional tanks to the property when they relocated McAllister fuels on the premises. Any fuel sold to outside customers is sold from the same truck that services the Farm properties and deliveries are made from the same load.
8. McAllister Fuels sells fuel to neighborhood residents, although the largest consumer of fuel continues to be the Farm and the fuel is primarily used for agricultural purposes on both Pleasant Valley Farm and neighboring farms owned by the St. Pierres.

III. Analysis

The Act 250 statute and rules,¹ in general terms, exempt construction of improvements on farms when the construction activities are related to operating the farm upon which the improvements are made. In this case, the bulk fuel tanks originally constructed to maintain farm operations on farms owned and controlled by the St. Pierres are proposed for (or have been converted to) at least partial retail sales of fuels to farmers or to non-farmer retail customers for use on farms or other properties not owned or controlled by St. Pierre. A customer list and bulk fuel delivery truck were purchased from a commercial fuel delivery business to facilitate these activities.

IV. Conclusion

I find that under this set of facts, the conversion and use of the existing bulk fuel tanks to provide commercial sales of fuels to farms and to customers not otherwise owned or controlled by the St. Pierres constitutes "development" under 10 V.S.A. § 6001 et seq. Accordingly, an Act 250 Land Use Permit is required prior to continued use of the bulk fuel tanks in this manner.

¹ Cf. 10 V.S.A. § 6001(3)(D)(i) and Rules 2(C)(18)(19)(24).

V. Right of Appeal

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Sincerely,

/s/ William T. Burke
William T. Burke
District Coordinator

Attached: Exhibit List
Certificate of Service